IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Iwamura	)	Art Unit: 2619
Serial No.: 10/790,496	)	Examiner: Phunkulh
Filed: March 1, 2004	)	50T5713.02
For: **SYSTEM AND METHOD FOR MULTI-LINK COMMUNICATION IN HOME NETWORK**	)	November 11, 2008 750 B STREET, Suite 3120 San Diego, CA 92101

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
Alexandria, VA

Dear Sir:

The issues Applicant would like to have reviewed prior to the filing of an appeal brief are as follows.

1. In the Office Action dated September 26, 2008, Claims 1-8 have been rejected under 35 U.S.C. §112, first paragraph for lacking written description of "the server or the component determining" the path, but that allegation is patently mistaken. See original Claim 25, for instance ("at least one of: a server, and a component, determines which path to use for communication based at least in part on an occupancy ratio"). If "at least one of" the server and component determines the path, it strains credulity to assert that the skilled artisan would fail to recognize that Applicant possessed one or both components making the determination.

2. Claims 1-6, 9-15, and 18-23, of which Claims 1, 9, and 18 are independent, have been rejected under 35 U.S.C. §102 as being anticipated by Falvo et al., USPP 2003/0140343. The Office Action correctly alleges that in Falvo, "the display devices are connectable to WLAN bridge 330 via ***either*** twisted pair ***or*** via RF link, see figure 5 (sic, figure 3)" (emphasis mine). Claim 1, however, requires that a component be configured for communicating with the server along a wired path ***and also*** along a wireless path, and that the server and/or component determines which path to use for communication based on at least one of: a component preference, a bandwidth capability, an occupancy ratio. Thus, since no one display component in Falvo appears to communicate over both a wired and a wireless link as required by Claim 1, there is no reason to undertake the determination in Claim 1 of selecting which path to use, much less to undertake the determination using the specific parameters claimed, and not surprisingly Falvo does not teach anything of the sort.

Indeed, Falvo's description of the relied-upon components in figure 3 bears this out:

> "[0048] FIG. 3 shows a digital cable TV system 300 including an in-home network including wireless display (remote wireless) devices 310, 315 and wired display devices 320, 325 used to create reminder and intercom messages using a wireless local area network (WLAN) 330 that is bridged either to a cable modem within an STB 335 or a stand-alone cable modem (not shown) to allow access to the Internet 340. Data received from the Internet 340 is primarily routed from the cable modem in STB 335 to the display devices 310, 315, 320, 325 through the WLAN Bridge 330. The display devices 310, 315, 320, 325 support both HomeRF and 802.11b wireless protocols."

Thus, as unambiguously taught by the reference, each of the relied-upon components communicates with the WLAN bridge 330 through a wired link, ***or*** a wired link, but not both, since apparently no component is configured for multi-link communication. Thus, there is no possible reason to modify Falvo to make a

choice between two links, much less in the ways variously recited in the claims. The error in the rejections could not be clearer.

3. Claims 7, 8, 16, 17, 24, and 25 have been rejected under 35 U.S.C. §103 as being unpatentable over Falvo et al. Indeed, the Office Action admits on the top of page 8 that Falvo fails to disclose determining a path to use based on bandwidth or occupancy ratio, but without any support whatsoever alleges that doing so would have been obvious "to improve the system's performance by avoiding congestion on the link." Not only is this unsupported by evidence of record, but since Falvo's display devices each communicate using one and one only one path (wired ***or*** wireless), there is no reason to modify Falvo to make a selection that is not possible given Falvo's architecture.

The remarks above have been responded to on page 8 of the Office Action with a repeated allegation that the WLAN bridge 330 of Falvo selects a path based on a preferred communication path, e.g., a twisted pair for devices 320 and 325 and a wireless link for devices 310 and 315, pointing to paragraphs 48-51 for further support. However, as exemplified above by paragraph 48, no choice of which of two paths to use between the bridge 330 and any single device is ever made in Falvo since each device communicates with the bridge using one and only one link.

"The name of the game is the claim". Claim 1 requires a component configured for communicating with the server along a wired path and also (***N.B., the same component***) for communicating with the server along a wireless path. That limitation is not in Falvo. Then, according to Claim 1 server and/or the component determines which path (***N.B., of the two paths between the same component and the server***) to

use for communication. That limitation is not in Falvo. The bridge 330 makes no decision as to which of two paths to a component to use because no component communicates with the bridge over more than one path.

But Claim 1 is not done distinguishing over Falvo. It further requires that the determination (which is not in Falvo) must be based on a component preference or a bandwidth capability or an occupancy ratio (none of which have any relevance to Falvo).

Respectfully submitted,

John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg